C.S.1001/ (3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 2376 / 2004

Petitioner : Chhattisgarh Shiksha Samiti, A registered Society under the Provisions of firms and societies Act, through its President Shankar Rao Bapte S/o late Khanderao Bapte, Aged about 80 years, R/o Kilaward, Juna Bilaspur, Dist : Bilaspur-(C.G.)

Versus

Respondents :

1. The State of Chhattisgarh, Through Secretary (Tourism, Culture & Religious Trusts) : Mantralaya D.K.S. Bhawan, Raipur-(C.G.)
2. The Collector Bilaspur, Dist : Bilaspur-(C.G.)
3. The Sub Registrar (Registration), Composite Building, Opposite Collector, Bilaspur-(C.G.)
4. Shri Rafique Ahmed Khan S/o Shri Masood Khan, Aged about 70 years, R/o Juni Line, Bilaspur, Presently residing at Flat No.113, Utkarsh Nirman, Mangaleshwari Bazar, Sadar Nagpur-(M.S.)
5. Jubed Ahmed Khan S/o Rafique Ahmed Khan, Aged about 45 years, R/o Juni Line, Bilaspur, Presently residing at Flat No.113, Utkarsh Nirman, Mangaleshwari Bazar, Sadar Nagpur-(M.S.)
6. Sameer Ahmed Khan S/o Rafique Ahmed Khan, Aged about 38 years, R/o Juni Line, Bilaspur, Presently residing at Flat No.113, Utkarsh Nirman, Mangaleshwari Bazar, Sadar Nagpur-(M.S.)

P.R No. 2365/04
Presented by Shri Pankaj Mishra
dated 5-8-04

02/8/04

RECEIVED-COPY
23/8/04
Clerk to A.G. Bilaspur

(4)

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 2376/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	03.09.2004 Shri P. Diwakar, counsel for the petitioner. Shri N.K. Agrawal, Deputy Advocate General for the State. By this writ petition under Article 226/227 of the Constitution of India the petitioner has sought for following reliefs; that respondent No.4 to 6 be directed not to alienate the suit property and not to disturb the possession of the petitioner over the property in question; the Collector, Bilaspur be directed to take appropriate action against respondent Nos. 4 to 6; the Deputy Registrar be directed not to register any sale deed in respect of the property in possession of the petitioner, if some attempt is being made by respondent Nos.4 to 6 for alienating the said property; the State of C.G. be directed to conduct high level enquiry in respect of the Wakf in question and the entire Wakf record in respect of the Wakf property be summoned before this Court; respondent No.4 to 6 who are threatening the petitioner and Society members for eviction at any point of time be suitably warned and the petitioner, the Society and the school be protected. The case of the petitioner is that the petitioner Society is a registered Society under the provisions of Firms and Societies Act and registration certificate is Annexure P-1. The petitioner society is	

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running a school in the name of Chhattisgarh Higher Secondary School in the premises, which has been taken by the Samiti on rent from one Shri Masood Khan in the year 1951. Initially, rent of the premises was Rs.60/-, which was increased upto Rs.5,000/-, rent is being paid to one Shri Rafique Ahmed respondent No.4. The petitioner's further case is that after taking land on rent, the petitioner Society constructed various rooms, hall, laboratories, stage, staff rooms, storerooms, and computer blocks in various areas and spent about Rs.8,75,500/- in constructing the same, the present cost of construction at the market rate is about 18,20,000/-. The petitioner's school is one of oldest schools in the city of Bilaspur and students from Class 6th to 12th are studying, total strength of the students are about 1300 out of which 80% students belong to Scheduled Castes, Scheduled Tribes, OBC and Minority. It is the further case of the petitioner that after the development of the town, the school premises is now in the heart of the city surrounded by commercial activities. On account of this development cost of the land and building is now very high and *it seems that respondent No.4 to 6 have an idea in their minds to sell their property to the private persons contrary to the Wakf-Nama, to make good amount of money* and to achieve the mission, some of the property of the Wakf has already

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been sold and litigations are pending before this Court. The members of the petitioner Society *are also getting threat from respondent No.4 to 6 that the school building and land would also be sold to third person, therefore, Society be ready to leave the place.* The Society apprehends that if the school building is sold to third person particularly to some contractors or land mafias then the poor teachers and students cannot do anything especially against the Mafia power of such person.

The petitioner further case is that Haji Mohd. Akbar Khan & Haji Mohd. Masood Khan bequeathed their immovable property situated at Bilaspur and Raipur districts of erstwhile State of M.P. vide Wakf Alal Auladnama (Wakf deed) dated 20.4.1937 described in Para 11 of the Wakf deed. The subject matter of this writ petition is the property mentioned in Para-1 situated at Chatapara, Bilaspur. This property is managed by Shri Rafique Khan i.e. respondent No.4 being a Mutavalli, the sole purpose of creating this Wakf was for the benefit of descendents of the executants, it was made clear in the Wakf deed that respondent No.4 is to act as Mutavalli during his lifetime. The sole responsibility of Mutavalli is to manage the Wakf property efficiently and honestly without wasting. From the proceeds of Wakf property 1/3rd portion is to be distributed amongst

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Guaredar's (Beneficiaries) with rest of the income. Mutavalli is to manage his family and maintain the Wakf property. The Wakf property described in Wakf Deed (Annexure P-4) was duly notified in the State Gazette dated 25.8.99 (Annexure P-2)

Therefore, by this petition the petitioner is seeking a relief restraining respondent No.4 to 6 from transferring or alienating the property in question to any third person.

I have heard learned counsel for the petitioner on the question of admission.

Learned counsel for the petitioner argued that the Wakf property cannot be transferred, mortgaged, gifted or sold to any third person but respondent No.4 to 6 are trying to transfer/alienate this property to third party, particularly to some powerful lobby and if it is allowed then the petitioner has reasonable apprehension that they will be dispossessed from the property in question and the huge amount which was invested by them will go waste. Therefore, through a writ of prohibition respondent No.4 to 6 be restrained from selling, transferring or alienating the property in question to any third person, as also respondent No.2 be directed to intervene in the matter.

As per the allegations made in the writ petition, it is an admitted fact that the petitioner Society is in occupation of the said

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property as a tenant, the petitioner's right is to protect its tenancy right. The main relief in the petition is sought against respondent No.4 to 6, who are the private parties; therefore, in the first instance no writ of prohibition can be issued against the private parties. A writ of prohibition can be issued by superior court to an inferior court preventing inferior court from usurping jurisdiction with which it is not legally vested, or in other words, to compel the Courts with judicial duties to keep within the limits of their jurisdiction, or to prevent them from violating the rules of natural justice. A writ of prohibition lies against the judicial or quasi-judicial proceedings not against the private person.

The main grievance of the petitioner is that respondent No.4 to 6 be restrained from selling the tenanted property and ground for that raised by the petitioner is that first of all it is a Wakf property and respondent No.4 to 6 are not entitled to transfer that property. On the one hand the petitioner has admitted that the father of respondent No.4 leased out the property to him, Respondent No.4 is Mutawalli of the Wakf property and receiving monthly rent. In the first instance, the petitioner herein is entitled to protect his right to tenancy on the ground that without following due process of law, the petitioner Society should not be evicted from the rented property

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and for that purpose as and when the petitioner's right is in jeopardy or the petitioner is threatened by anyone to vacate the premises, then the petitioner will be entitled to approach the appropriate Forum for redressal of its grievances as mentioned above resopondents No. 4 to 6 are private persons, therefore, no writ lies against them. Even if for example, the respondent No.4 to 6 are not entitle and they execute any sale deed, in the first instance, the Sub-Registrar before registering the document will look into the authority of respondent No.4 to 6 whether they are entitle to sell the property or not, thereafter only he will refuse or register the document, at this stage it can not assumed that sub-Registrar will register the document without looking into the authority of the transferee to transfer the land. Even otherwise, in Para 5.7 of the petition, the petitioner has written that it seems that *respondent No.4 to 6 have the idea in their minds to sell their property to private persons,* but still no definite allegations are leveled against respondent No.4 to 6 that they are transferring the property and to whom they are transferring the property. In Paragraph-3 of the affidavit filed in support of the petition, it has been mentioned that contents of the petition are within the personal knowledge of Shankar Rao Bapte, President of the Petitioner Society, but it has not been mentioned that from whom and

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	from where he has received personal knowledge that respondent No.4 to 6 are transferring the property in question and to whom they are transferring, therefore, this petition lacks in material particulars. Therefore, in view of the above, I am of the opinion that the writ petition is misconceived for the above reasons, same is liable to be dismissed and it is, accordingly, dismissed at the admission stage. **Sd/-** **L.C. Bhadoo** **Judge**	

Roshan